

IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIVIL APPELLATE JURISDICTION  
FAMILY COURT APPEAL NO. 116 OF 2004

**Mandakini @ Seema Prakash Nalawade**

Aged about 42 years, Occ. Service  
Indian Inhabitant, at present residing  
at C/o. Anant Hanuman Jadhav,  
6/4, Shardha Chawl. Ambewadi,  
Parel Tank Road, Mumbai-33

... Appellant  
(Orig. Respondent)

***Versus***

**Prakash Shankar Nalawade**

Aged about 44 years, Occ. Service  
Hindu. Indian Inhabitant,  
residing at 4/234, Abhyudaya  
Nagar, Kalachowki,  
Bombay-33.

... Respondent  
(Orig. Petitioner)

WITH

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***Versus***

...2/-

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residing at 4/234, Abhyudaya  
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Bombay-33.

... Respondent  
(Orig. Respondent)

Adv. Shri S.S. Redekar for the Appellant

Adv. Mrs. A.A. Agarwal for the Respondent

**CORAM : S.B. MHASE,**  
**& S.R. SATHE, JJ.**  
**DATED : 19<sup>th</sup> SEPTEMBER, 2006**

**ORAL JUDGEMENT :- (PER SATHE, J.)**

1. The Appellant-wife has filed these two appeals against her husband and challenged the judgement and order passed by the Judge, 7<sup>th</sup> Family Court, Mumbai whereby the Petition for divorce filed by the husband bearing No. 1740 of 2000 was allowed and the Petition No.1517 of 2001 filed by the wife against husband for restitution of conjugal rights was dismissed. For the sake of convenience hereafter parties shall be referred to as 'Appellant-wife' and 'Respondent-husband'.

2. The brief facts giving rise to these two

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appeals are as under :-

The marriage between Appellant and Respondent took place as per Hindu Vedic Rites on 19/05/1987. After marriage, the appellant-wife started residing with Respondent-husband in his house situated at Kalachouki. Her mother-in-law was also residing in the same house. It is Appellant's case that at the time of marriage, she was serving in Central Institute of Fisheries while the husband was having service in other Government Department. When she received her first salary after marriage and handed over the pocket of the said salary to her mother-in-law, she counted the currency notes and asked as to why she gave only Rs. 1,100/-, particularly when she was having salary of Rs. 1,400/-. As a result, the mother-in-law started quarrel with her. It is Appellant's case that thereafter, every time there used to be quarrel on account of her salary and her husband used to say that she should hand over her entire salary to him and her salary should be used to meet the household expenses. It is Appellant's case that her husband as well as mother-in-law were asking

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her to bring amount of Rs. 40,000/- for the repairs of their house and on that count also, there used to be quarrel. Not only that but the husband was also used to have physical fight on that count. Apprehending danger to her life, she even approached the Police Station in July-1987 and August-1987. According to Appellant, on 22/01/1990 also her husband and mother-in-law ill-treated her and hence she filed a complaint with police. Her mother-in-law also used to insult her on the ground that she had not conceived a child. Not only that but she used to say that the Respondent-husband should perform second marriage. It is her case that even after the time she gave birth to a female child on 13/03/1993, there was no improvement in the behavior of her mother-in-law and she used to taunt her and say that as she has not given birth to a son, the Respondent should perform second marriage. According to her, the Respondent had also fight with her brother. As a result of all this ill-treatment and harassment, she left the matrimonial home on 20/04/1998.

3. On 14/12/2000, the Respondent-husband filed Marriage Petition No. 1740-2000 in the Family Court, Pune under section 13 (1)(ia)(ib) of the Hindu Marriage Act, 1955 for divorce against his wife i.e. present Appellant. In that Petition, the husband alleged that Appellant-wife was not returning from her office immediately after close of the office but on the contrary, used to return home late at about 8.30-9.00 pm. Whenever, he used to ask her as to why there was delay she used to give evasive answer. It was her regular practice of returning home late. It is alleged that after the office hours every day the Appellant-wife used to go to her maiden home and return to matrimonial home late. As a result of the same, Respondent-husband's mother was required to carry out all household work. Naturally, there used to be quarrel between Appellant-wife and Respondent-husband on that count. According to respondent, the Appellant-wife even lodged a false case against the Respondent and his mother with Social Service Branch CID Cell-IV on 22/01/1990. Not only that, but on that day, she brought

one policemen and with his help, she took away her belongings and left home. However, she returned to matrimonial home on 23/01/1990. But even thereafter there always used to be quarrel between them on count of Appellant-wife returning home late. She was not giving proper attention to household work and she was not ready even to prepare food. It is also the case of Respondent-husband that his wife often used to insist that they should reside separately and not with her mother-in-law. It is husband's case that with a view to have a happy married life, he even secured one rented accommodation at Borivali. But even then there was no improvement in her behavior.

4. According to Respondent-husband, on 22/10/1991 when they were residing at Borivali, his father expired and information about the same was given to them by the brother of Appellant-wife. Hence the appellant and respondent went to their house at Kalachouki. On that day, the wife went to her maiden home and did not return. She continued to stay there for long time and

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returned home after a long period. Thereafter, he had even taken her to Doctor and on 13/03/1993, the Appellant-wife gave birth to a female child, who is named as Prajakta.

5. According to Respondent-husband even after the birth of female child the Appellant-wife was not behaving properly and not giving proper attention to her daughter and household work. As a result of the same, there often used to be quarrel and the wife even used to abuse him and fight with him. There was also no conjugal relations with her since October-1997. On 20/04/1998, she picked up a quarrel with him and left the house and thereafter never returned. Thus, according to Respondent-husband the conduct of Appellant-wife was amounting to cruelty and she also deserted him. He, therefore, filed the Petition No. 1740 of 2000 for divorce.

6. According to Respondent-husband following acts of the Appellant-wife caused mental agony to him and at

times, even she also caused physical cruelty to him.

(1) The Appellant-wife was not returning home immediately after the closure of her office but used to come at night at about 8.30-9.00 pm and everyday, she used to go to her maiden home after office hours. Whenever, the Respondent-husband used to ask the reason for her delay, she used to give evasive reply and never gave the correct reason and that caused mental torture to him.

(2) The Appellant-wife was not carrying out her routine household work and on the contrary, used to avoid the same and as a result of the same, aged mother of Respondent-husband was required to do household work.

(3) Whenever Respondent-husband used to ask the reason for delay in returning home

*or the reason for not doing any particular work, Appellant-wife used to quarrel and abuse and at times even immediately thereafter, used to leave her matrimonial home and go to her maiden home.*

*(4) On two occasions, she even went to the Police Station and lodged false complaint against the Respondent-husband and his relatives including his mother.*

*(5) The Appellant-wife did not keep conjugal relations with the Respondent-husband after October-1997.*

*(6) The Appellant-wife also did not take care of the minor daughter Prajakta.*

*(7) According to Respondent-husband, on 20/04/1998 after picking up quarrel with him the Appellant-wife left the matrimonial*

*home at 8.30 pm. At about 9.40 pm, she again returned, collected all her ornaments and clothes and left the house and thereafter never returned and thus deserted him.*

7. The wife filed her Written Statement at Exh-7 and opposed the Petition. She admitted her marriage with Respondent-husband and that out of the said wedlock, they have a daughter by name Prajakta. She, however, denied all other allegations made against her and contended that right from the first month after her marriage with Respondent, she was being harassed by the Respondent and his mother on account of her salary. It is her contention that her mother-in-law was always taunting her on account of the fact that she had not given birth to any child. The Respondent-husband also used to harass her even though she was doing all household work after return from office. Both of them were in fact insisting that she should bring money from her brother. Their conduct was of such nature that she

apprehended danger to her life. She, therefore, lodged a police complaint on 22/01/1990. The Respondent-husband as well as his mother were called by police and were warned. Thus, according to her, the Respondent-husband and his mother-in-law were in fact treating her mercilessly and causing mental disturbances to her. She never insisted that she and her husband would reside separately and not with the mother-in-law. According to her, even on 20/04/1998, there was fight with Respondent and at that time, he assaulted her and as a result of the same, she was constrained to leave the matrimonial home. She, therefore, contended that she had not deserted the husband. On the contrary, she specifically averred that it was her intention to co-habit with the Respondent-husband. According to her, even after the time she left the matrimonial home she had repeatedly tried to contact her husband on telephone but there was no response from the husband. Hence, on all these grounds, she contended that her husband is not entitled for a decree of divorce on the ground of cruelty and desertion.

8. On these pleadings, the learned Trial Judge framed issues at Exh-9.

9. It is an admitted fact that after filing of this Petition of divorce by the husband, the Appellant-wife filed Petition No.115 of 2004 for restitution of conjugal rights against the husband wherein also she took the same contentions and alleged that when she was in the matrimonial home, her husband and his mother ill-treated her but it was never her intention to put an end to her marital relations with Respondent-husband. Even after the time when she went to her maiden home, she made efforts to contact Respondent-husband but the same proved to be futile. According to her, the Respondent-husband withdrew himself from her company without any sufficient cause. She, therefore, prayed for a decree for restitution of conjugal rights.

10. The Respondent-husband filed his Written Statement and opposed the said petition for restitution

of conjugal rights and took the contention which he had taken in his divorce petition. He contended that he did not withdraw himself from the company of Appellant-wife but on the contrary, the wife deserted him. He, therefore, prayed for dismissal of the petition for restitution of conjugal rights.

11. Both the Petitions were clubbed together and common evidence was recorded. In order to prove his case, husband examined himself at Exh-14. As against this, the Appellant-wife examined herself at Exh-25 and her brother. After considering the evidence adduced by both the parties, learned Trial Judge, Family Court, Mumbai came to the conclusion that the husband has proved that the conduct of the Appellant-wife was amounting to cruelty as contemplated under section 13 (1)(ia). She also held that the wife deserted the husband. Naturally, the learned Trial Judge, Family Court passed decree for divorce in favour of husband and dismissed the Petition for restitution of conjugal rights by the wife by common judgement.

12. The above mentioned judgement and order is challenged by the wife by filing the above mentioned two separate appeals. Family Court Appeal No.115 of 2004 in connection with the dismissal of her Marriage Petition No. 1517/2001 for restitution of conjugal rights and other Family Court Appeal No.116 of 2004 in respect of the decree passed against her for divorce in Marriage Petition No. 1740 of 2000.

13. The learned advocate for the Appellant-wife has urged only two points. Firstly, he submitted that the learned Trial Judge has not properly appreciated the evidence of wife and her brother and wrongly relied on the sole testimony of the Respondent-husband, though it was not corroborated by any independent evidence. Secondly, he canvassed before us that the learned Trial Judge has not taken into consideration the fact that under the peculiar circumstances, the Appellant-wife had went to her matrimonial home on 20/04/1998 and thereafter, she had made efforts to contact her

husband. But on the contrary, the husband had not made any efforts to bring her back. So, the learned Trial Judge ought to have held that the Respondent-husband had in fact withdrawn himself from the company of Appellant-wife without any sufficient cause and as such decree for restitution of conjugal rights should have been passed in favour of the wife. As against this, the learned Advocate for the Respondent-husband supported the judgement and order passed by the Trial Judge.

14. It is not in dispute that the marriage between Appellant and Respondent took place on 19/05/1987 and thereafter, Appellant-wife started residing with her husband at their house situated near Kalachouki. It is also not in dispute that both the parties were employed even prior to the marriage. If we carefully read the evidence adduced by both the parties, one thing is certain that there often used to be some quarrel between the Appellant and Respondent. It is admitted by the Respondent-husband that he had asked the wife to give her salary and asked her to spent the same to meet

the household expenses. It is the contention of the wife that she in fact used to hand over the entire salary after keeping some small amount with her and that too for meeting the expenditure with regard to day to day private expenses and railway pass etc. According to her, rest of the salary was being used towards household expenses. She has also alleged that her husband and his mother were insisting that she should bring some money from her brother and on that count, she used to harass her. It is pertinent to note that within few months after the marriage, the Appellant-wife had lodged a complaint with Police in which also she had made the grievance about the ill-treatment that was meted to her at the hands of her husband. However, it is an admitted fact that even after the said complaint, the appellant and respondent stayed together. Admittedly, even on 22/01/1990, the wife had filed another complaint with Social Service Branch, CID, and in that complaint also, she had made several allegations against her husband and mother-in-law. But it is also undisputed that even after this complaint

both the Appellant and Respondent had again come together and co-habited. Not only that but admittedly out of the said wedlock, they are having a daughter by name Prajakta. She was born on 13/03/1993. Considering this aspect, it can be said that so far as the earlier conduct of both the parties is concerned, they had condoned the alleged acts of torture or harassment made by each other. So, the incidents which occurred prior to that will in fact not come to the help of the Respondent-husband to prove that the conduct of Appellant-wife was amounting to cruelty.

15. It is true that the Respondent-husband has stated that Appellant-wife used to return home late and not immediately after the closure of the office and whenever, he used to ask her about the same, she used to give evasive answers and used to pick up quarrels. It must be noted that the Appellant-wife has however denied the said allegations and stated that she in fact used to return immediately after the closure of office but while returning she used to purchase some

vegetables or other articles if necessary and then return home. Besides the bear interested word of Respondent-husband there is no other evidence to show that the Appellant-wife every day used to return home late and that she never used to give correct reason for returning late. Under such circumstances, it can not be said that such conduct of the Appellant-wife was in fact causing any mental torture to Respondent-husband and it was of such nature that as result of the same it had become impossible for him to live with the Appellant-wife.

16. It is true that the Appellant-wife had filed 2-3 complaints against husband and mother-in-law. But mere filing of the complaints by itself can not be said to be an act of cruelty. There is no sufficient material on record to show that the complaints that were filed by the Appellant-wife against her husband and mother-in-law were totally concocted or imaginary or false. When such is the position, one can not jump to the conclusion that the said conduct of the

Appellant-wife namely filing complaint for the offence punishable under section 498-A of IPC amounts to cruelty.

17. Though it is stated by the Respondent-husband that Appellant-wife was not properly looking after the daughter or that she was not attending the household work and as a result of the same his aged mother was required to attend the household work etc, the same is not supported by any other evidence and under the circumstances of the case, it can not be said that the wife was not at all doing any household work which normally she was supposed to do and as a result of the same, any mental harassment or agony was caused to Respondent-husband. It must be noted that the entire evidence of the Respondent-husband on the point of cruelty is very vague and not at all supported by any independent evidence. It is true that it is always very difficult to have any independent evidence with regard to disputes between husband and wife which have taken place inside four walls of the house. But if we take

into consideration all the attending circumstances then it appears that the Respondent-husband has in fact failed to adduce sufficient evidence to show that the conduct of the Appellant-wife was amounting to cruelty as contemplated under section 13(1)(ia) of the Hindu Marriage Act. It must be noted that even the learned Trial Judge has also in fact observed at one stage that the evidence of Respondent-husband on the point of cruelty is very vague. In fact, she has also gone to the length of observing that the Respondent-husband used to assault his wife and that is reflected in the complaint lodged by the wife with Police on 22/01/1990 (Exh-27). So, having regard to all this, we are of the considered view that the finding recorded by the learned Trial Judge on the point of cruelty is not sustainable on the basis of the evidence on record. We are therefore of the opinion that the Respondent-husband is not entitled to get divorce on the ground of cruelty.

18. It must be noted that the husband has claimed

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divorce also on the ground of desertion. It is needless to say that in order to have the relief of divorce on the ground of desertion, the Petitioner must prove two things. Firstly, the separation in fact of the husband and wife and secondly, *animus deserendi*. While considering these two essential ingredients, we have to see what is the evidence on record to show that the Appellant-wife had an intention to put an end to the marital tie and she had no intention to co-habit with Respondent-husband. It is an admitted fact that on 20/04/1998, the Appellant-wife left her matrimonial home. In her cross-examination, she has clearly stated:-

*"It is true that on 20/04/1998 on the issue of my daughter I had quarrel with the Petitioner and left the house on my own."*

19. The above mentioned admission of the Appellant-wife is in fact sufficient to show that she left the matrimonial home on her own. It is true that an attempt

has been made on her behalf to show that as a result of the harassment and ill-treatment meted to her at the hands of Respondent-husband and his mother, she was constrained to leave the matrimonial home on 20/04/1998. However, it is pertinent to note that she has not at all adduced cogent and convincing evidence to show that on 20/04/1998 or little prior to that there was any such ill treatment given to her by the Respondent-husband. Even according to her on that day, some quarrel took place on account of their daughter and the Respondent-husband beat her and she therefore left the house. It was argued on behalf of the Appellant-wife that her brother Anant Jadhav has corroborated her version in that behalf. However, it must be noted that admittedly, the said brother was not present when the alleged incident of quarrel or assault took place. All that he has stated is that the Appellant-wife told him that she was beaten by the Respondent. Firstly, it must be noted that the brother has stated that this incident took place in May-1998. While admittedly the wife left the house on 20/04/1998.

Besides this, if really the Appellant-wife would have been beaten on that day by the Respondent-husband then taking into consideration the previous background and the fact that on 2-3 occasions when some incident had occurred, she had filed complaint with police, then on 20/04/1998 also if really any such grave incident had occurred and Respondent-husband had beaten her as result of which according to her, she was constrained to leave the house, she would have filed the complaint with Police on that day. But admittedly, she has not taken any such action. So, we are not inclined to believe the version of the Appellant-wife that she was compelled under the circumstances to leave her matrimonial home on 20/04/1998.

20. There is another aspect of the matter. It is argued on behalf of the Appellant-wife that even after the time, she went to her maiden home, she tried to contact her husband but he could not be contacted and the Respondent-husband never issued any notice calling upon her to come to his house and co-habit. However, it

must be noted that if really the Appellant-wife had no intention to desert the Respondent-husband then normally she would not have returned to maiden home with all her ornaments and clothes. The Respondent-husband has stated that on that day, the appellant-wife returned home with her ornaments and clothes. It must be noted that if really the Appellant-wife had desire to co-habit with the Respondent-husband, then certainly, she would have taken some action and would have issued notice to Respondent-husband informing him that he should give undertaking that he would not ill-treat her and should take her with him. But admittedly, no such notice has been issued by the Appellant-wife. So, under such circumstances, it is very difficult to accept her version that all along she was ready and willing to co-habit with the Respondent-husband. On the contrary, the fact that she did not take any action for a period of about two years after returning from the matrimonial home clearly indicates that it was her intention to put an end to the marital tie and there was thus an animus to desert the Respondent-husband.

Incidentally, it must also be noted that the wife has clearly admitted in her cross-examination that as her husband filed petition for divorce she filed Petition for restitution of conjugal rights. So this also goes to show that it was never her desire to co-habit with the Respondent-husband or even to file a petition for restitution of conjugal rights. If she had real genuine desire to co-habit with the Respondent-husband but he was not ready and willing for the same and had withdrawn himself from the company of Appellant-wife, then certainly the wife would have filed Petition for restitution of conjugal rights within the reasonable period after she returned to matrimonial home. But that has not happened. So, the conduct of the Appellant-wife is quite eloquent and clearly establishes that the Appellant-wife has in fact deserted the Respondent-husband and it can not be said that the Respondent-husband had withdrawn himself from the company of Appellant-wife without any sufficient cause. The finding recorded by the learned Trial Judge on the ground of desertion is legal and correct. The learned

Trial Judge has therefore rightly rejected the claim made by the wife for the restitution of conjugal rights. The finding recorded by the learned Trial Judge in this behalf can not be said to be erroneous or against the evidence on record. It is therefore not necessary to interfere with the said finding.

21. In this view of the matter, there is no substance in both the appeals and it is necessary to dismiss the same.

22. Family Court Appeal No.116 of 2004 and Family Court Appeal No.115 of 2004 are dismissed. Parties to bear their own cost.

**(S.R. SATHE, J.)**

**(S.B. MHASE, J.)**

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